94 Phil. 798

[G.R. No. L-6855. April 23, 1954]

LAZARA R. BIEN, PETITIONER AND APPELLEE, VS. PEDRO BERAQUIT, RESPONDENT AND APPELLANT.

D E C I S I O N

BAUTISTA ANGELO, J.:

This is an appeal from a decision of the Court of First Instance of Albay declaring respondent Pedro Beraquit ineligible to the office of mayor of the municipality of Malilipot, Province of Albay, on the ground that he was not a resident of said municipality one year prior to the elections held on November 13, 1951.

A petition for *quo warranto* was filed by Lazara R. Bien to test the eligibility of Pedro Beraquit to be a candidate for the office of mayor of the municipality of Malilipot, Province of Albay. It is alleged that the respondent was ineligible for that position because he was a resident of Baras, Catanduanes, and has not resided for at least six months in Malilipot, Albay, prior to the elections held on November 13, 1951, and that, notwithstanding his ineligibility, he registered his candidacy for that office and was proclaimed duly elected by the municipal board of canvassers on November 17, 1951. It is prayed that his election be declared null and void and the office be declared vacant.

The record shows that upon the filing of the petition for *quo warranto* on November 19, 1951, the court issued an order directing that summons be made immediately upon respondent giving the latter three days within which to answer from service thereof. The hearing was set for December 4, 1951. In compliance with said order, the clerk of court, on November

23, 1951, required the deputy sheriff of Catanduanes to serve the summons at respondent's residence in Baras, Catanduanes, and directed that another summons be served upon him at his residence in Malilipot, Albay. Neither of the summons was served either because of respondent's absence or because of the refusal of the persons found in his residence to accept the service. As a result, substituted service was resorted to as allowed by the rules by leaving a copy of the summons at the residence of respondent.

When the date set for hearing came, neither the respondent, nor his counsel appeared. He did not also file an answer as required by the court. Petitioner asked to be allowed to adduce evidence in the absence of respondent, but the court decided to transfer the hearing to December 7, 1951 in order to give respondent ample opportunity to appear and defend himself. In the same order, the court directed that another summons be served upon respondent. Again, the summons failed for the same reasons. And when the case came up for hearing for the second time, and respondent again failed to appear, the court decided to allow petitioner to present her evidence. Thereafter, a decision was rendered granting the petition. Copy of this decision was received by respondent on December 15, 1951 and on December 18, he filed a motion praying that the decision be set aside and the case be heard on the merits. This motion was granted and the court set the hearing on February 22, 23, and 25, 1952.

On February 22, 1952, petitioner presented four witnesses. On February 23, 1952, she presented one witness, and on February 25, 1952, she presented two more witnesses, plus eleven pieces of documentary evidence. Then she rested her case.

When the turn of respondent came to present his evidence, counsel for petitioner made a manifestation whereby he made of record his objection to any and all evidence that respondent intends to present on the ground that it would be immaterial and irrelevant for the reason that he has failed to file an answer to the petition. At this juncture, counsel for respondent asked for an opportunity to file an answer, and instead of ruling on this request, the court allowed counsel to present

evidence without prejudice on its part to disregard it if it should find later that the question raised is well taken. But after the presentation of one witness, and while the second witness was in the course of his testimony, the court suspended the hearing and required the parties to present memoranda to determine whether or not respondent may be allowed to file his answer and continue presenting his evidence. This was done, and on March 14, 1952, the court issued an order denying the request to file an answer and declaring the case submitted for decision. And on the same date, it rendered decision declaring respondent ineligible as prayed for in the petition. The case is now before Us upon the plea that the question involved in this appeal is purely one of law.

The question posed in this appeal is whether the lower court erred in denying the request of respondent to be given an opportunity to file an answer to the petition and, in default thereof, in denying him the right to continue presenting his evidence notwithstanding the action of the court in setting aside its previous decision in order to give him an opportunity to appear and defend himself.

The reasons which the lower court has considered in denying the request of respondent to be given an opportunity to file an answer and to be allowed to present evidence in support of his defense are clearly stated in the decision. Said reasons are: “As above stated, respondent failed to file his answer and when his turn came, and he attempted to present his evidence, counsel for petitioner vehemently objected on the ground that he has not raised any issue. The court, after a careful consideration of all the facts and circumstances surrounding the case, was constrained to sustain the objection of petitioner, and barred respondent from presenting his evidence. For evidently, he is guilty of gross and inexcusable negligence. From the time he voluntarily appeared in court on December 18, 1951 when he filed the motion for reconsideration above adverted to, he submitted himself to the jurisdiction of the court. His voluntary appearance is equivalent to service. Consequently, he should have filed then his answer within the reglementary period fixed by law, it being his legal duty to do so. At least, he should have filed his answer from the time he received the

order setting aside the judgment—that is, on January 21, 1952, and before the 15 days period expired. When he entered trial on February 22, 1952, without filing his answer, there was no issue raised, and a summary judgment for petitioner may be rendered. Indeed, Section 8, Rule 9 of the Rules of Court provides, among others, that material averments in the complaint other than those as to the amount of damage, shall be deemed admitted when not specifically denied; and Section 10 states that defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived."

We can hardly add to the foregoing reasons of the lower court which we find fully supported by the record. We can only state in passing that the granting of a motion to file an answer after the period originally fixed in the summons, or in the rules of court for that purpose had expired, is a matter that is addressed to the sound discretion of the court, and under the circumstances obtaining in the case, we find that this discretion has been properly exercised. The court has been most liberal to respondent such that it even went to the extent of setting aside its previous decision. And we don't believe that the interest of Justice will be jeopardized if the decision of the lower court is maintained for, while on one hand the evidence adduced by the petitioner appears to be strong, on the other, it does not appear that respondent has made any offer of the evidence he intended to introduce that might give an inkling that, if presented, it may have the effect of offsetting the evidence of petitioner. There is, therefore, no legal basis for concluding that the result of the decision would be 'changed had respondent been able to complete his evidence. And in the absence of this basis, respondent's plea for equity can deserve but scant consideration.

Wherefore, the decision appealed from is affirmed, without pronouncement as to costs.

Parss, C. J., Pablo, Bengzon, Montemayor, Reyes, Jugo, Labrador, Concepcion, and *Diokno, JJ.,* concur. .

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